IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL REVISION APPLICATION NO. 21 OF 2003.

M/s. Atreya Shipping P. Ltd.,
204, Damodar Chambers, Opp.
Syndicate Bank,
Vasco-da-Gama, represented by
its Director Shri Prabhakar
Narayan Sawant, r/o Tivrem,
Marcel. ... Applicant.

Versus

1. Shri Agnelo Castellino,
   Director, M/s. R.C. Coastal
   Exports P. Ltd., 606, Garden
   Resorts, Chembur, Mumbai.
2. State through Public
   Prosecutor. ... Respondents.

Mr. S.G. Bhobe, Advocate for the Applicant.

Mr. J. Furtado, Advocate for the Respondent No. 1.

Mr. S.N. Sardessai, Public Prosecutor for the
Respondent No. 2/State.

Coram : P.V. HARDAS, J.

Date : 18th September 2003.

ORAL JUDGMENT.

This Criminal Revision Application, at the behest of the complainant, seeks to impugn the Order of the District and Sessions Judge, South Goa, Margao, dated 26th February 2003, in Criminal Revision Application No. 49 of 2002, dismissing the complaint, filed by the complainant, for an offence punishable under Section 138 of the Negotiable Instruments Act.

2. The facts in brief, as are necessary for the decision of this Criminal Revision Application, are set

out hereunder:-

On 4th September 2001, the applicant/complainant filed a complaint against the respondent no. 1/accused for an offence punishable under Section 138 of the Negotiable Instruments Act. The complaint was registered as Criminal Case No. 116/N/2001/A, before the Judicial Magistrate, First Class, Vasco-da-Gama. The allegations in the complaint were that the respondent no. 1/accused had taken on hire a coastal vessel belonging to the applicant/complainant and towards the payment of the hire charges, the respondent no. 1/accused had given a cheque bearing No. 691175, dated 19th April 2001, for Rs. 3 lakhs, drawn on the HDFC Bank, Mumbai. When the said cheque was deposited for realization, the said cheque was returned unpaid with a memorandum, dated 1st August 2001, on the ground of insufficient funds in the account of the respondent no. 1/accused. A registered notice, dated 4th August 2001, was issued to the respondent no. 1/accused demanding payment and despite receipt of the same, the respondent no. 1/accused did not make any payment. The learned Judicial Magistrate, First Class, Vasco-da-Gama, issued process to the respondent no. 1/accused. The respondent no. 1/accused filed an application before the learned trial Court for re-call of process issued against him.

Alongwith the said application, the respondent no. 1/accused had produced several documents including a letter/fax message, dated 8th May 2001, issued by the applicant/complainant. The learned trial Court, by Order, dated 2nd November 2002, dismissed the application for re-call of process filed by the respondent no. 1/accused. The respondent no. 1/accused, being aggrieved by the aforesaid Order of the learned trial Court, filed Criminal Revision Application before the District and Sessions Judge, South Goa, Margao. The learned District and Sessions Judge, vide his Order impugned in the present Criminal Revision Application, allowed the revision filed by the respondent no. 1/accused and dismissed the complaint. Hence, this revision assailing that Judgment.

3. The learned District and Sessions Judge, while allowing the revision, held that the fax message, dated 8th May 2001, issued by the applicant/complainant, informed the respondent no. 1/accused that the cheques issued by him had bounced on account of insufficiency of funds. The said fax message also informed the respondent no. 1/accused that the total outstanding balance payable to the complainant till 7th May 2001 was Rs. 90 lakhs. The fax message then called the respondent no.1/accused to "kindly make arrangement to pay our dues immediately". The learned District and

Sessions Judge held that the fax message was satisfying all the requirements of the notice contemplated under Section 138(b) of the Negotiable Instruments Act and the complainant, therefore, ought to have filed the complaint within one month from the expiry of 15 days from the issuance of the said notice. Since the complainant had filed the complaint beyond the statutory period, the learned District and Sessions Judge held the complaint to be time barred and, therefore, dismissed the same.

4. Mr. Bhobe, the learned counsel appearing on behalf of the applicant/complainant, has submitted that the fax message, dated 8th May 2001, cannot be construed as a notice as contemplated under Section 138 of the Negotiable Instruments Act. According to the learned counsel, the said notice does not call upon the respondent no. 1/accused to pay the amount of the cheques. All that the fax notice informs the respondent no. 1/accused is the bouncing of the cheques due to insufficiency of funds. He, therefore, submits that the Judgment of the learned District and Sessions Judge is patently erroneous and deserves to be quashed and set aside.

5. Mr. Furtado, the learned counsel appearing on behalf of the respondent no. 1/accused, has submitted

that by the fax message, dated 8th May 2001, the respondent no. 1/accused was informed that the cheques issued by him had bounced and the complainant had called upon the respondent no. 1/accused to pay the amount due to the complainant. He, therefore, submits that the fax message is a notice as contemplated under Section 138 of the Negotiable Instruments Act and, since the complainant had not filed the complaint within a month of the expiry of the period of 15 days, the complaint was beyond the period of limitation as prescribed. He, therefore, submitted that the Judgment of the learned District and Sessions judge in revision does not require any interference.

6. The Supreme Court in **Central Bank of India and another v. Saxons Farms and others**, (1999) 8 S.C.C. 221, has held that in the notice a demand for payment of the amount of the cheque has to be made.

7. The Supreme Court in **Suman Sethi v. Ajay K. Churiwal and another**, (2000) 2 S.C.C. 380, has held that demand has to be made for the cheque amount. If no such demand is made, the notice would fall short of its legal requirement. Where in addition to the "said amount" there is also a claim by way of interest, cost etc., whether the notice is bad would depend on the language of the notice. The Supreme Court further held

that when it is specified in the notice the amount of cheque, interest, damages, etc., are severable, it would not invalidate the notice. If, however, in the notice an omnibus demand is made without specifying what was due under the dishonoured cheque, the notice may fail to meet the legal requirement and may be regarded as bad

8. In the present case I may usefully reproduce the fax message, which is as follows:-

" Atreya Shipping Pvt. Ltd.

FAX MESSAGE

8 MAY 2001

TO,
R.C. COASTAL EXPORTS PVT. LTD.,
MUMBAI.

KIND ATTN. MR. AGNELO COUTINHO/T.S. SUBRAHAMANIAM

DEAR SIR,

AS PER INSTRUCTIONS FROM MR. T.S. SUBRAHAMANIAM TO MR. P.N. SAWANT ON 7TH MAY 2001 WE HAVE DEPOSITED YOUR TWO NOS OF CHEQUES OF Rs. 3.00 LAKHS EACH AND SAME HAS BEEN BOUNCED 'DUE TO INSUFFICIENT FUNDS IN YOUR ACCOUNTS'.

WE HAVE TO PAY SALARIES OF MARCH & APRIL, INSURANCE PREMIUM 7 LOAN INSTALMENT AND INTEREST TO FINANCIAL INSTITUTION AND OTHER CREDITORS.

OUR OUTSTANDING BALANCE DUE TO US TILL 7TH MAY 2001 IS RS. 90.00 LAKHS.

KINDLY MAKE ARRANGEMENT TO PAY OUR DUES IMMEDIATELY.

THANKING YOU,

For ATREYA SHIPPING PVT. LTD.,
Sd/.
P.N. SAWANT
DIRECTOR"

9. In the fax message the respondent no. 1/accused was informed that the two cheques each worth Rs. 3 lakhs had bounced due to insufficieny of funds in his account. The accused was also informed that the outstanding balance due to the complainant till 7th May 2001 was Rs. 90 lakhs. The fax message then calls upon the accused to make arrangements to pay the dues of the complainant immediately. Thus, in the fax message the accused was informed regarding the amount of the cheques which had bounced and the accused was then called upon to pay "our dues". Thus, as per the fax message it cannot be contended that the demand for payment was an omnibus demand and did not include or segregate or specify the demand for the payment of the amount of cheques which had bounced. From the first paragraph of the notice the amount of cheques was clearly specified and though the notice specified that the balance payable to the complainant was Rs. 90 lakhs, the demand for the other dues could clearly be segregated. This notice can, therefore, be construed as a notice demanding payment of the amount of the cheques as well as a notice demanding the other outstanding dues. The learned District and Sessions Judge, therefore, in my view, was perfectly justified in holding the fax message to be a valid notice as

contemplated under Section 138 of the Negotiable Instruments Act and dismissed the complaint filed by the complainant as barred by limitation. The language of the fax message is clear, the amount of the cheques is specified and the demand for payment can be related to the amount of cheques as well as to the other dues. Therefore, in my opinion, this Criminal Revision Application is devoid of any substance and deserves to be dismissed.

10. In the result, therefore, Criminal Revision Application is dismissed.

(P.V. HARDAS)
JUDGE.

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